

Subject
Person

OLL 84-3233
21 August 1984

MEMORANDUM FOR: Chief, Administrative Law Division
Office of General Counsel

ATTENTION:

FROM:

Legislation Division
Office of Legislative Liaison

SUBJECT: Restriction on Contracting Out for
Preference Eligible Positions

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1. Our office has been queried as to the effect of two recent bills containing restriction on contracting out for jobs traditionally reserved on a preference basis for veterans. The FY 1985 Treasury Bill (H.R. 5798) and H.R. 5799 contain provisions to this effect.

2. Section 507 of the Treasury Bill provides that:

None of the funds made available to the General Services Administration pursuant to Section 210(f) of the Federal Property and Administrative Services Act of 1949 shall be obligated or expended after the date of enactment of this Act for the procurement by contract of any service which, before such date, was performed by individuals in their capacity as employees of the General Services Administration in any position of guards, elevator operators, messengers, and custodians, except that such funds may be obligated or expended for the procurement by contract of the covered services with sheltered workshops employing the severely handicapped under Public Law 92-28.

By its own terms, this restriction applies only to the General Services Administration and does not apply to the CIA.

3. The House has recently enacted H.R. 5799 (attached), which amends 5 U.S.C. § 3310 to prohibit agencies from contract procurement of those services, (i.e., guards, elevator operators, messengers and custodians) that are reserved for

performance by preference eligibles (i.e. veterans) in the competitive service. However, it is our understanding that this general prohibition will not affect CIA practices since the CIA is not subject to Veteran's Preference legislation.

4. Please provide us with your opinion as to CIA coverage under these bills.

Attachments

cc:

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98TH CONGRESS
2D SESSION

H. R. 5799

IN THE SENATE OF THE UNITED STATES

AUGUST 1 (legislative day, JULY 30), 1984

Received; read twice and referred to the Committee on Governmental Affairs

AN ACT

To amend title 5, United States Code, to establish certain requirements for the procurement by contract of certain services that are reserved for performance by preference eligibles in the competitive service.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 3310 of title 5, United States Code, is amended
4 to read as follows:

5 **"§ 3310. Preference eligibles; examinations; guards, eleva-**
6 **tor operators, messengers, and custodians**

7 **"(a)** In examinations for positions of guards, elevator
8 operators, messengers, and custodians in the competitive

1 service, competition is restricted to preference eligibles as
2 long as preference eligibles are available.

3 “(b) An agency may not procure by contract any of the
4 services performed by employees in any of the positions de-
5 scribed in subsection (a) of this section if the performance of
6 such services by contract—

7 “(1) would cause the involuntary separation of a
8 preference eligible from any such position; or

9 “(2) would preclude the performance of any of
10 such services by a qualified preference eligible in the
11 competitive service.

12 “(c)(1) For purposes of subsection (b)(1) of this section,
13 neither an involuntary reassignment within the same agency
14 nor an involuntary transfer to another agency shall be consid-
15 ered to be an involuntary separation if such reassignment or
16 transfer is to a vacant position—

17 “(A) which is of the same type as the type of po-
18 sition described in subsection (a) of this section from
19 which the preference eligible was reassigned or trans-
20 ferred,

21 “(B) which is within the preference eligible’s com-
22 muting area,

23 “(C) for which the preference eligible is qualified
24 (taking into consideration any physical disability which
25 the preference eligible may have), and

1 “(D) the grade or pay level of which is at least
2 equal to the grade or pay level which was in effect for
3 the preference eligible immediately before having been
4 so reassigned or transferred.

5 “(2) The Office of Personnel Management shall pre-
6 scribe regulations necessary to carry out this subsection.

7 “(d) Subsection (b)(2) of this section—

8 “(1) shall not preclude the procurement of serv-
9 ices by contract if, or to the extent that, qualified pref-
10 erence eligibles are not available; and

11 “(2) shall not apply with respect to a position
12 which is held by an employee other than a preference
13 eligible on the date that the contract is entered into.

14 “(e) For purposes of this section, the term ‘qualified
15 preference eligible’ means, with respect to a position de-
16 scribed in subsection (a) of this section, a preference eligible
17 whose qualifications have been established.”.

18 SEC. 2. (a) Any procurement by the Government of
19 services performed in any of the positions described in section
20 3310(a) of title 5, United States Code, as amended by this
21 Act, shall be in accordance with applicable provisions of law,
22 including the provisions of the Act entitled “An Act to create
23 a Committee on Purchases of Blind-made Products, and for
24 other purposes”, approved June 25, 1938 (41 U.S.C. 46-
25 48c), requiring certain procurements of services from quali-

1 fied nonprofit agencies for the blind and qualified nonprofit
2 agencies for other severely handicapped, and Office of Man-
3 agement and Budget Circular Numbered A-76 (including any
4 supplement thereto).

5 (b) For purposes of this section, the terms "Govern-
6 ment", "qualified nonprofit agency for the blind", and "quali-
7 fied nonprofit agency for other severely handicapped", each
8 has the meaning given such term under section 5 of the Act
9 so entitled (41 U.S.C. 48b).

Passed the House of Representatives July 30, 1984.

Attest: BENJAMIN J. GUTHRIE,
Clerk.